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Attorneys for Plaintiff Kenneth E. Smith

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH E. SMITH,)	Case No. 3:06-cv-02966 BZ
)	
Plaintiff,)	
)	STIPULATION AND PROPOSED
v.)	ORDER AMENDING PROTECTIVE
)	ORDER
CITIFINANCIAL RETAIL SERVICES, et al.,)	
)	
Defendants.)	
)	

Plaintiff, Kenneth E. Smith, and defendants CitiFinancial Retail Services and Citibank (South Dakota) National Association, through their respective counsel, stipulate to the entry of an order adding the attached Addendum to Protective Order to the existing protective order in this case. (Dkt. # 48.)

Dated: February 13, 2007 KEMNITZER, ANDERSON, BARRON & OGILVIE LLP

/s/ Andrew J. Ogilvie
Attorney for Plaintiff Kenneth E. Smith

1 Dated: February 13, 2007 Severson & Werson, A Professional Corporation

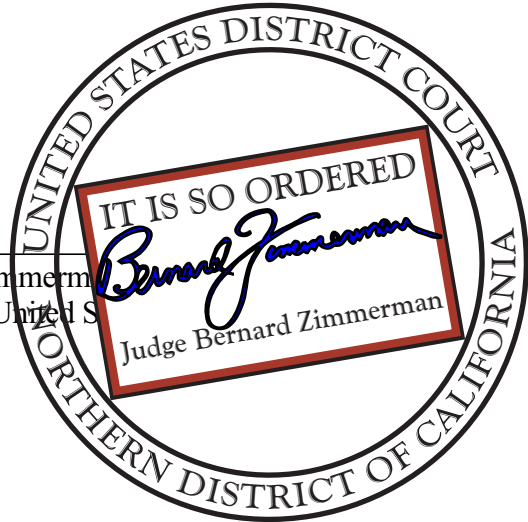
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3 /s/ Regina J. McClendon

4 Attorney for defendants CitiFinancial Retail Services and
Citibank (South Dakota) National Association

5 It is ORDERED that the Protective Order in this case is modified by the addition of the
6 attached Addendum to Protective Order.

7 Dated: February 26, 2007

8
9
10 Bernard Zimmerman
Magistrate Judge, United States District Court



Addendum to Protective Order

(Case Name)

(Case No.)

IT IS FURTHER ORDERED as follows:

1. DESIGNATION OF DOCUMENTS

Before designating any specific information "Confidential" or "Confidential --Attorneys' Eyes Only," the designating party's counsel shall make a good faith determination that the information warrants such protection under Rule 26(c) of the Federal Rules of Civil Procedure. Counsel should note that not all confidential documents warrant the "Confidential --Attorneys' Eyes Only" level of protection. This heightened level of protection is appropriate only for the most highly sensitive documents; it is warranted only if "the potential injury is substantial and cannot be prevented through the use of any device less restrictive of a party's access to his lawyer." Doe v. Dist. of Columbia, 697 F.2d 1115, 1120 (D.C. Cir. 1983). Thus, the court expects the parties to use this designation sparingly. See, e.g., THK America v. NSK Co., Ltd., 157 F.R.D. 637 (N.D. Ill. 1993) (revoking party's right to use "attorneys' eyes only" designation as sanction for bad faith overuse of that designation).

A party may designate as "Confidential" or "Confidential --Attorneys' Eyes Only" documents or discovery materials produced by a non-party by providing written notice to all parties of the relevant document numbers or other identification within thirty (30) days after receiving such documents or discovery materials. Any party or non-party may voluntarily disclose to others without

1 restriction any information designated by that party or non-party
2 as confidential, although a document may lose its confidential
3 status if it is made public.

4 Counsel are cautioned that over-designation of documents may
5 result in sanctions. The filing of documents designated
6 "Confidential" or "Confidential --Attorneys' Eyes Only" puts an
7 additional burden on the court. Often the party filing the
8 document is not the designating party. In that situation the
9 party does not have the option to unilaterally de-designate
10 documents before submitting them to the court, and has no choice
11 but to request they be filed under seal. Over-designating
12 documents can thus result in unnecessary work for the court in
13 sorting the documents that deserve sealing from those that do
14 not, as well as additional work for the parties who must then
15 re-file public versions of the non-confidential documents. The
16 best way to avoid this result is for counsel to use best efforts
17 to make appropriate designations at the outset, and to promptly
18 de-designate a document when it comes to counsel's attention that
19 the document is over-designated.

20 21 2. CHALLENGES TO CONFIDENTIALITY OF DESIGNATED MATERIAL

22 If a party contends that any material is not entitled to
23 confidential treatment, such party may at any time give written
24 notice to the party or non-party who designated the material.
25 The party or non-party who designated the material shall have
26 twenty (20) days from the receipt of such written notice to apply
27 to the Court for an order designating the material as
28

1 confidential. The party or non-party seeking the order has the
2 burden of establishing that the document is entitled to
3 protection.

4 Notwithstanding any challenge to the designation of material
5 as "Confidential" or "Confidential --Attorneys' Eyes Only", all
6 documents shall be treated as such and shall be subject to the
7 provisions hereof unless and until one of the following occurs:

8 (i) the party or non-party who claims that the material is
9 confidential withdraws such designation in writing; (ii) the
10 party or non-party who claims that the material is confidential
11 fails to apply to the Court for an order designating the material
12 confidential within the time period specified above after the
13 receipt of a written challenge to such designation; or (iii) the
14 Court rules the material is not confidential.

16 3. REQUESTS TO FILE DOCUMENTS UNDER SEAL

17 Any party wishing to file under seal any document(s)
18 designated "Confidential" or "Confidential --Attorneys' Eyes
19 Only" shall lodge the document(s) along with a Request for
20 Sealing pursuant to Civil Local Rule 79-5. The document(s) shall
21 be submitted in an appropriate envelope labeled with the case
22 name and number and the title of the document(s). Any party
23 claiming confidentiality for the information for which sealing is
24 requested shall serve and file declaration(s) from competent
25 witnesses setting forth specific facts demonstrating that sealing
26 is warranted under Rule 26(c). This shall be done at the time of
27 lodging, or within five (5) days thereafter if the lodger is not
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1 the proponent of confidentiality. "For good cause to exist, the
2 party seeking protection bears the burden of showing specific
3 prejudice or harm will result if no protective order is granted."
4 Phillips v. General Motors Corp., 2002 WL 972125 at *3 (9th Cir.
5 May 13, 2002). The parties are cautioned that "[b]road
6 allegations of harm, unsubstantiated by specific examples or
7 articulated reasoning, do not satisfy the Rule 26(c) test."
8 Beckman Indus., Inc. v. Int'l Ins. Co., 966 F.2d 470, 476 (9th
9 Cir.), cert. denied, 506 U.S. 868 (1992). See also Citizens
10 First Nat'l Bank of Princeton v. Cincinnati Ins. Co., 178 F.3d
11 943, 945-46 (7th Cir. 1999), cited with approval in San Jose
12 Mercury News v. U.S. Dist. Court, 187 F.3d 1096, 1103 (N.D. Cal.
13 1999). The factual showing must address separately each portion
14 of the materials that the party contends warrants protection.
15 See Civil Local Rule 79-5 and commentary thereto.

16
17 4. CONFLICT

18 In the event of any conflict between this Addendum and the
19 parties' stipulation, this Addendum controls.

20 Dated: January 30, 2002

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22 _____
23 Bernard Zimmerman
24 United States Magistrate Judge
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